IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

SADRINA WALTON,	:	APPEAL NO. C-160715 TRIAL NO. A-1403971
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
CHRISTINA ROYAL,	:	
Defandant,	:	
and	:	
ESTATE OF THOMAS GIBSON, SR.,		
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Sadrina Walton contests the entry of summary judgment in favor of defendant-appellee, the estate of Thomas Gibson, Sr., on her claims for personal injuries sustained in a dog attack. Thomas Gibson was the owner and lessor of a single-family home with no common areas. Defendant Christina Royal was his tenant. Walton was seriously injured when, while visiting the property, Royal's two pit bull dogs attacked her on the porch and just inside the front door of the leased property.

Walton asserted, in two counts of her complaint, that under R.C. 955.28 and under a general theory of premises liability, Gibson was liable for her injuries. Gibson died during the course of litigation and his estate was substituted as a defendant.

The estate ultimately moved for summary judgment supported by affidavits of the estate's executors, a copy of the lease agreement, and Walton's answers to the estate's requests for admissions. These established that Gibson had leased the property to Royal ceding possession and control of the property to her. He retained the right to enter the property only to inspect it, to make repairs, and to collect the rent. Though the lease agreement denied Royal the right to keep dogs on the property, Gibson had seen Royal's dogs on the property. But the estate's co-executor, Gibson's granddaughter, stated that Gibson had no knowledge that the dogs were vicious or had attacked anyone in the past. Walton opposed the motion with her own affidavit.

The trial court granted the estate's motion for summary judgment and added its express determination that there was no just reason for delay. *See* Civ.R. 54(B). Walton appealed.

Because summary judgment presents only questions of law, we review a summary-judgment ruling de novo. *See Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). When, as here, the party moving for summary judgment discharges its initial burden to identify the absence of genuine issues of material fact on an essential element of the nonmoving party's claims, the nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth specific facts, by the means listed in Civ.R. 56(C) and 56(E), demonstrating that triable issues of fact exist. *See* Civ.R. 56; *see also Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

In her first assignment of error, Walton argues that the trial court erred in granting summary judgment in favor of the estate on her premises-liability claim. Without citation to competent authority, Walton argues that she may maintain a premises-liability claim against Gibson. *But see Beckett v. Warren*, 124 Ohio St.3d 256, 2010-Ohio-4, 921 N.E.2d 624, ¶ 7 ("There are two bases for recovery in Ohio for injuries sustained as a result of a dog bite: common-law and statutory."). She asserts that Gibson had breached a duty to warn her of the presence of the dogs on the property. Walton stated that to prevail on her claim, she was required to establish, inter alia, that Gibson knew or should have known that Royal's dogs were vicious.

When the estate moved for summary judgment, Walton responded that Gibson should have known that the dogs were vicious because he had observed the dogs play catch with bricks much as dogs of lesser strength would play catch with a ball.[1] But she is undone by her answers to the estate's requests for admissions. Even construing Walton's answers most strongly in her favor, it is clear that she admitted that "although [she also had] witnessed the dogs" play catch with bricks, she nonetheless lacked personal knowledge of their viciousness.

Because Walton has failed to establish that Gibson knew or should have known of the viciousness of Royal's dogs—an essential element of her premises-liability claim—the trial court properly entered summary judgment. *See* Civ.R. 56(C). The first assignment of error is overruled.

In her second assignment error, Walton asserts that Gibson was strictly liable for her injuries under R.C. 955.28(B). Gibson's knowledge of the dogs' viciousness is irrelevant to this claim. To prevail, Walton must prove only that Gibson was an owner,

[1] Both Ohio and Cincinnati have repealed legislative enactments that pit bulls are presumed to be vicious animals. *See* former R.C. 955.11(A)(4)(a)(iii); *see also* former Cincinnati Municipal Code 701–24.

keeper, or harborer of the dogs which caused her injuries. *See Beckett*, 124 Ohio St.3d 256, 2010-Ohio-4, 921 N.E.2d 624, at ¶ 11. A harborer is one who has possession and control of the premises where the dogs live, and acquiesces to the dogs' presence. *See Jones v. Goodwin*, 1st Dist. Hamilton No. C-050568, 2006-Ohio-1377, ¶ 6.

But a landlord cannot be a harborer if his tenant has sole possession and control over the premises where the dogs are kept. *See id.* "The control necessary as the basis for liability in tort implies the power and the right to admit people to [the leased premises] and to exclude people from it." *Cooper v. Roose*, 151 Ohio St. 316, 319, 85 N.E.2d 545 (1949); *see Richeson v. Leist*, 12th Dist. Warren No. CA2006-11-138, 2007-Ohio-3610, ¶ 15.

It is undisputed that Gibson was neither the owner nor the keeper of the dogs. *See Flint v. Holbrook*, 80 Ohio App.3d 21, 25, 608 N.E.2d 809 (2d Dist.1992). While Walton asserted, in her affidavit in opposition to summary judgment, that Gibson had acquiesced to the dogs' presence on the leased property, she did not produce any evidence to dispute the estate's claim that, by entering into the lease agreement, Gibson had transferred sole possession and control of the property to Royal, his tenant. *See Riley v. Cincinnati Metro. Hous. Auth.*, 36 Ohio App.2d 44, 48, 301 N.E.2d 884 (1st Dist.1973); *see also Diaz v. Henderson*, 12th Dist. Butler No. CA2011-09-182, 2012-Ohio-1898, ¶ 15. Thus Walton could not establish the existence of a genuine issue of material fact concerning whether Gibson was a harborer of the dogs. *See* Civ.R. 56(C); *see also Beckett* at ¶ 11. The trial court did not err in granting summary judgment on Walton's strict-liability claim. The second assignment of error is overruled.

Therefore, the trial court's entry of summary judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., ZAYAS and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on June 14, 2017

per order of the court _____.

Presiding Judge